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5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
6 **OF THE STATE OF CALIFORNIA**
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8 In the Matter of the Application of:

9 **C.W.**

Precedent Decision No. 04-02

10 Application No: 698272

11 **Introduction**

12 A telephone hearing on this application was held on December 3, 2003, in Sacramento,
13 California, by Richard P. Fisher, Hearing Officer, California Victim Compensation and Government
14 Claims Board (Board). Applicant C.W. and her husband, R.W. appeared at the hearing by telephone
15 from Perris, California, and testified under oath.

16 **Procedural Background**

17 The application for compensation under the Victim Compensation Program (program) is based
18 on the qualifying crime of driving under the influence, during which C.W. received serious physical
19 injuries. The application was received on March 5, 2002,¹ and was determined to be eligible on April 2,
20 2002. The application seeks compensation for medical and mental health counseling expenses, for
21 income loss and for home or vehicle modifications for a disabled victim. The current appeal concerns a
22 request by C.W. for in- home care expenses she incurred following the qualifying crime. Board staff
23 recommended that the request be denied because of insufficient evidence that the in-home care expense
24 were incurred as a direct result of the qualifying crime. In particular, Board staff noted that the in-home
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28 ¹ Because the application was filed before the effective date of the current statute, Statutes 2002, chapter 1141 (Senate Bill
29 1423, Chesbro), all references are to the Government Code sections in effect on or before December 31, 2002.

1 care expenses were not supported by sufficient medical evidence. A timely appeal of staff's
2 recommended denial was filed.

3 **Statement of Issues**

4 Is there sufficient evidence to determine the in-home care expenses incurred by C.W. from
5 December 6, 2000, through July 28, 2001, are medically necessary as a direct result of the qualifying
6 crime?

7 **Summary of Evidence**

8 The documentary evidence in the Board's file, and C.W. and R.W.'s testimony during the
9 hearing establish that C.W. was injured during a motor vehicle accident on November 10, 2000. As a
10 result of the accident, C.W. sustained serious injuries to her arms and leg. At the time of the accident,
11 C.W. was also seven months pregnant. As a result of the accident, her baby sustained fatal injuries and
12 was determined to have died later at the hospital. The driver of the other vehicle was determined to be
13 under the influence of alcohol at the time of the collision and was charged with one felony count of
14 violating Vehicle Code section 23153(a). C.W. was treated at the hospital for abrasions to her face and
15 on her left leg. She also received two broken wrists, a broken femur and a broken pelvis that required
16 surgery to repair.

17 Board staff verified that C.W. received compensation from the suspect's auto insurance company
18 in the amount of \$15,000. Board staff used this amount to offset two bills that C.W. had submitted
19 totaling \$1,500.14. C.W. has not submitted any other medical bills to date.

20 Initially, in-home care was allowed by verification staff for the time frame of November 30,
21 2000, through December 30, 2000, but the in-home care expenses were treated as being fully reimbursed
22 by the auto insurance settlement. The current appeal concerns additional in-home care expenses that
23 C.W. incurred between December 6, 2000, through July 28, 2001, which total \$14,442.40. The
24 documentary evidence submitted by C.W. in support of the current appeal and her testimony during the
25 hearing revealed that the in-home care was provided alternatively by Ms. Darr, to whom C.W. states she
26 paid \$1,500.00 in cash for her services, and R.W., who has provided in-home care from approximately
27 November 10, 2000, to the present date.

1 C.W. also submitted in support of her appeal a form CA-61 from the California Department of
2 Health and Human Services Agency which is dated June 13, 2002. Section 3 of that form is entitled,
3 “Physician or Licensed/Certified Psychologist Statement.” The form appears to have been filled out by
4 Angie Reyes, MHT, supervisor of the Riverside County Department of Social Services in Perris,
5 California. That form states in part that C.W. cannot ambulate and that she cannot provide income to
6 herself or her family. There is a question on the form: “Does patient’s condition require someone to be
7 in the home to care for him/her?” and the box next to it is checked “yes.” Importantly, the form also
8 states that the information concerning the medical status of C.W. was taken from C.W.’s medical
9 records.

10 Board staff contacted the Riverside County Regional Medical Center in an effort to clarify the
11 medical necessity for C.W.’s in-home care following her treatment after the November 10, 2000,
12 qualifying crime. On March 5, 2003, Dr. Bradley Baum, Chief of Orthopedic Surgery, wrote to the
13 Board concerning C.W. Dr. Baum stated that C.W. was initially hospitalized and treated after the
14 qualifying crime at Inland Valley Medical Center and after her discharge was referred to the Regional
15 Medical Center for follow-up care. Dr. Baum explains that C.W.’s treatment included care for bilateral
16 upper extremity fractures and that for a time she may have needed some assistance in the activities of
17 daily living at home. Dr. Baum states, however, that any need for in-home care would have been
18 ordered or recommended by the Inland Valley Regional Medical Center at the time of C.W.’s discharge.
19 Dr. Baum states that he reviewed C.W.’s medical record and found no reference to an order for in-home
20 health care services. Dr. Baum concludes from the medical records that C.W. was considered
21 independent for purposes of discharge from the hospital.

22 During the hearing, C.W. and R.W. each testified that C.W. needed full time in- home care from
23 the date she arrived home after the qualifying crime to the present date. C.W. in particular argued that
24 the CA-61 form that she submitted with her appeal is alone sufficient to establish the medical necessity
25 for the in-home care she has received from both Ms. Darr and Robbie W. Both C.W. and R.W. argued
26 that without R.W.’s in-home care, their family could not have continued to function properly. R.W.
27 testified that he quit his job and came home in order to provide for their children, and he did the house
28 cleaning, the cooking, and all other domestic duties that C.W. could no longer perform.

1 With respect to Dr. Baum's medical opinion, C.W. stated that Dr. Baum was not intimately
2 involved in her care and was, rather, giving an administrative opinion as to whether she needed in-home
3 care or not. In essence, C.W. argued that Dr. Baum did not have first hand knowledge of her medical
4 situation and, therefore, his opinion should be discounted.

5 **Findings of Fact**

6 Based on the testimony of C.W. and R.W. during the hearing and on the documentary evidence
7 contained in the Board's file, substantial evidence supports each of the following findings of fact:

8 1. C.W. was the victim of the qualifying crime of driving under the influence on November
9 10, 2000.

10 2. C.W. has been previously deemed eligible for in-home care and reimbursement for that care
11 has been offset by a \$15,000 insurance settlement obtained from the driver of the vehicle that caused
12 the qualifying crime.

13 3. There is no medical evidence that C.W. required in-home care as a direct result of the
14 qualifying crime. C.W. and R.W. provided testimonial evidence that C.W. required 24-hour in-home
15 care and that this care was provided by either Ms. Darr or R.W. from November 10, 2000, to the
16 present date.

17 **Determination of Issues**

18 The Board shall approve an application for assistance if a preponderance of the evidence shows
19 that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
20 (Gov. Code, § 13964(a).) Applicants have the burden of proof on all issues necessary to establish their
21 eligibility as a victim of a qualifying crime. (Gov. Code, § 13964(a); Cal. Code Regs., tit. 2, § 647.32.)
22 A "qualifying crime" is defined as a crime that results in injury to the victim, threat of injury to the
23 victim, or death to the victim. (Reg., § 649(a)(18).) The Board may reimburse pecuniary loss when the
24 Board determines it will best aid the person seeking compensation. (Gov. Code, § 13965(a).)

25 Because C.W. has been previously determined to be eligible as a victim of a qualifying crime,
26 the only issue on appeal is whether the in-home care expenses C.W. incurred may be reimbursed. Here,
27 the evidence in support of the request for in-home care reimbursement consists of the testimony by C.W.
28 and R.W. that such care was necessitated as a result of the qualifying crime. C.W. also submitted a one-
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1 page handwritten notice on which she stated that she paid Ms. Darr \$1,500.00 in cash for in-home care
2 Ms. Darr provided from November 31, 2000, to January 12, 2001. Because the in-home care was
3 apparently paid for in cash, there is no receipt from Ms. Darr as further evidence of this payment.

4 On the other hand, there is medical evidence in the form of a letter from Dr. Baum that clearly
5 states C.W.'s medical condition did not warrant the ordering or recommending of home health care after
6 her hospitalization following the qualifying crime. That letter from Dr. Baum indicates that he made a
7 review of C.W.'s entire medical record in reaching the conclusion that the in-home care was not
8 medically necessary.

9 There is no express statutory or regulatory authority for compensating victims for in-home care
10 expenses. However, the Board has historically reimbursed individuals incurring such expenses on a
11 case-by-case basis when those expenses appeared to have been incurred as a direct result of the
12 qualifying crime and were supported by sufficient medical documentation. In particular, the Board has
13 looked to evidence from medical providers that set forth the length of time the in-home aide care was
14 necessary, the number of hours and days per week the care was needed, and a recommendation from a
15 medical provider that the care is necessary and that the victim cannot perform everyday tasks such as
16 preparing meals, bathing, and similar major life functions.

17 Here, the type of medical evidence historically required by the Board is lacking. In fact, the
18 medical evidence that was obtained by Dr. Baum undermined the conclusion that C.W. was in need of
19 fulltime in-home care for the periods claim. Although C.W. and R.W. testified sincerely that they
20 believed the in-home care was necessitated in their particular situation in order to manage their home,
21 that evidence was outweighed by the medical evidence to the contrary. On balance then, it is
22 determined that C.W. has not demonstrated by a preponderance of the evidence that the in-home care
23 expenses she has incurred arose as a medical necessity from her qualifying crime, and as such, they are
24 not qualifying pecuniary losses under the program. (Gov. Code, § 13964(a); Reg., § 647.32.)

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3 **Order**

4 C.W.'s request for in-home care expense compensation is denied.

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8 In the Matter of the Application of:

9 **C.W.**

Notice of Decision

10 Application No: 698272
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12 On April 23, 2004, the California Victim Compensation and Government Claims Board adopted
13 the attached decision as Precedent Decision 04-02.
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15 Date: May _____, 2004

16 _____
17 JUDITH A. KOPEC
18 Interim Chief Counsel
19 California Victim Compensation and
20 Government Claims Board
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